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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,247	10/14/2003	Gary T. Dane	SMI0077.US	3999

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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT PAPER NUMBER

3781

DATE MAILED: 11/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/685,247

Applicant(s)

DANE ET AL.

Examiner

Stephen J. Castellano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-19 is/are pending in the application.
- 4a) Of the above claim(s) 10-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-9, 18 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

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Claim 2 has been canceled. Claims 1 and 3-19 are pending

Applicant's election of claims 1-9, 18 and 19 in the reply filed on April 20, 2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 10-17 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Election was made **without** traverse in the reply filed on April 20, 2006.

Claims 1, 3-9, 18 and 19 have been treated according to their merits.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 5, 6, 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Lai.

Lai discloses a sterilization case assembly comprising a plurality of cases (13, 132), second case 13 stacked upon a first case 132 in vertical direction, the front side of the assembly is toward the right of the Fig. 1 view, the second case is offset from the first case in the Fig. 1 view, each of the cases are movable between closed and open positions, when the top case 13 (second case) is closed by lid 10 and the second from top case 13 just below the top case 13 acts as a lid for and as part of the second case 132 and is in a closed position and the second case (lid 10 and top case 13) is offset from the first case (second from top case 13 and bottom case 132), the limitations of claims 1 and 18 are met.

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Claims 1, 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Schafer.

Schafer discloses a sterilization case assembly comprising a plurality of cases (box units 10), second case (any case 10 stacked directly above a first case 10) stacked upon a first case (any case 10 stacked directly below a second case) in vertical direction, the front side of the assembly is toward the right of the Fig. 2 view, the second case is offset from the first case in the Fig. 1 view, each of the cases are movable between closed and open positions (by rear wall means 18 defined by a removable cover as stated at col. 2, lines 16-17).

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Kohagen.

Kohagen discloses a sterilization case assembly comprising a plurality of cases, second case (tray 64) stacked upon a first case (bin 10 without lid 12) in vertical direction, the front side of the assembly is toward the front wall 32 as shown in Fig. 1 and 2, the second case is offset from the first case in the Fig. 2 view because the lateral center axes of the tray 64 and bin 10 are not aligned but offset with the tray 64 axis offset to the rear of the bin 10 axis, each of the cases are movable between closed and open positions (by lid 12).

Claims 8 is rejected under 35 U.S.C. 102(b) as being anticipated by Trower et al. (Trower).

Trower discloses a tool box capable of holding items while they are sterilized, and is capable of performing as a sterilization case assembly, the assembly includes a first case 20 including a handle 28 and a second case 22 including a recess pocket (at the portion having elements 57 and 59). The handle interlocks with the pocket by a padlock connecting opening 35 of the handle with opening 59 of the pocket. The top surface of the first case (lower case 20) contacts the bottom surface of the second case (case 22) when stacked.

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schafer in view of Liu.

Schafer discloses the invention except for the drawers. Liu teaches a similar stackable case assembly with drawers. It would have been obvious to modify each of the cases (box units 10) of Schafer to have their rear walls defined by removable covers to be replaced with drawers as the access to the drawer from the top is easier and usually better lighted than the side access of the removable cover. Since a case could be defined by a plurality of box units, then one case (having a plurality of box units 10) includes a plurality of drawers.

Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schafer in view of Liu as applied to claims 3 and 1 above, and further in view of Holsinger.

The combination of Schafer and Liu discloses the invention except for the hinged front cover of claim 4 and the hinged lid of claim 5. Holsinger teaches a hinged front cover and a hinged lid. It would have been obvious to add the front cover and lid to add additional closing to the drawer structure and cases to add to the security of closure as drawers may inadvertently open and spill their contents.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schafer in view of Liu and Holsinger as applied to claim 5 above, and further in view of Trower.

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The combination discloses the invention except for the handle and recessed pocket. Trower teaches a handle and recessed pocket interlocking means. It would have been obvious to add the handle and recessed pocket of Trower to provide secure fastening in the stacked position to prevent stacked articles from separating.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Trower in view of Kohagen et al. (Kohagen).

Trower discloses the invention except for the offset. Kohagen teaches an offset insofar as claimed since the second case (tray 64) has a smaller footprint in plan view than the first case (lower bin 10), the smaller footprint of the second case provides an offset from the first case in a direction transverse to the vertical direction (horizontal direction). It would have been obvious to modify the second container to have a smaller footprint to provide access to laterally situated containers (such as container 50) provided within the lower bin which would not be accessible if the first and second case have the same footprint.

Applicant's arguments with respect to claims 1, 3-9, 18 and 19 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 571-272-4535. The examiner can normally be reached on increased flexibility plan (IFP).

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Stephen J. Castellano
Primary Examiner
Art Unit 3727

sjc